

## **REMARKS**

**[0003]** Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-40 are presently pending. Independent claim 17 is amended herein. No claims are withdrawn or cancelled or added herein.

### **Formal Request for an Interview**

**[0004]** Applicant requested an interview to discuss the arguments and amendments presented herein, however time and scheduling precluded conducting such an interview. If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

**[0005]** Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

### **Claim Amendments**

**[0006]** Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claim 17 herein.

**[0007]** Applicant amends claim 17 to clarify an existing distinction over the cited art, and should not be construed as further limiting the claim in response to cited art. Applicant expects any subsequent action to therefore be non-final.

## **SUBSTANTIVE MATTERS**

### **Claim Rejections under § 102**

[0008] The Examiner rejects claims 1-40 under §102. For the reasons set forth below, the Examiner has not shown that cited references anticipate the rejected claims.

[0009] Accordingly, Applicant respectfully requests that the §102 rejections be withdrawn and the case be passed along to issuance.

[0010] The Examiner's rejections are based upon the following reference:

- **Horn:** *Horn, et al.*, US Patent No. 2002/0107968 (published August 8, 2002).

### **Overview of the Application**

[0011] The Application describes an architecture for distributed sending of media data. In this architecture, media data is distributed across multiple devices, and a decentralized media data dissemination architecture is formed. Multiple respective senders are associated with multiple respective distributed portions of the media data. Multiple schedulers are associated with clients and are capable of scheduling the sending of media data thereto. (Application, Abstract)

### **Cited Reference**

[0012] The primary reference cited in the Office Action (i.e., Horn) describes a method of scheduling a media object for transmission between a server and a

client. The method comprises partitioning the media object into segments of blocks, wherein each block is a unit of media for which a client will wait to receive an entire block before playing out the block, and wherein each segment includes an integer number of blocks. (Horn, Summary)

## **ANTICIPATION REJECTIONS**

[0013] Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.<sup>1</sup> Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.<sup>2</sup>

### **Based upon Horn**

[0014] The Examiner rejects claims 1-40 under 35 U.S.C. § 102(b) as being anticipated by Horn. Applicant respectfully traverses the rejections of these claims. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

### **Independent Claims 1, 11, and 30**

[0015] The Examiner indicates (Action, p. 2-3) the following with regard to claim 1:

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<sup>1</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

<sup>2</sup> See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Regarding claim 1, Horn discloses "a system comprising:

a plurality of schedulers including a scheduler that is associated with a client and responsible for servicing a media data stream being sent to the client" ([0065]-[0068], [0074]-[0078], where each item 102 MOD server has items 214 and 216 schedulers for servicing media to item 104 the clients and where item 125 the administrative server also has a scheduler for handling send requests communicating with the MOD servers), "the scheduler adapted to formulate a send request that designates the client as a destination for a media data portion of the media data stream; and" ([0074]-[0078], Figs. 1-2, where requests for item 201 the media blocks or item 205 media streams is handled and encoded as determined by items 214 and 216 the schedulers and then transmitted to the client)

"a plurality of senders including a sender that is associated with media data including the media data portion, the sender adapted to send the media data portion to the client in response to the send request" ([0079], Figs. 1-2, where each item 102 MOD server has item 240 for sending the media across item 108 the network to item 104 the clients).

**[0016]** And the following (Action p. 6-7, and 10) with regard to independent claims 11 and 30:

Regarding claim 11, Horn discloses "a system comprising:

a first device having a first sender that is adapted to store a first media data block of a media data segment and to send the first media data block to

clients responsive to send requests;" ([0074], Fig. 1, each MOD server has a sender, where the media data must be stored on the server at some point for encoding before the sender can transmit the media data to the client)

"a second device having a second sender that is adapted to store a second media data block of the media data segment and to send the second media data block to clients responsive to send requests; and" ([0074]-[0075], where multiple MOD servers have the ability for sending the same or other portions of the media data)

"a scheduler that is adapted to transmit to the first sender a first send request that designates a destination client and stipulates the first media data block and to transmit to the second sender a second send request that designates the destination client and stipulates the second media data block" ([0074], [0077], item 12 the administrative server has the ability to perform the operations of the schedulers on each MOD server when communicating with the MOD servers which contains item 24 for sending the data).

Regarding claims 30-33, the claims have been analyzed and rejected for the reasoning as claim 11 above; where it is inherent the media data must be stored during encoding and preparing for transmission in the MOD server.

[0017] The systems and methods described in the cited art and in claims of the instant Application differ at least because the cited reference discloses no association between a client and a scheduler.

[0018] A review of the pertinent cited sections reveals this disparity.

[0019] This distinction is presently claimed as can be seen from the following text from claims 1 and 30:

- a plurality of schedulers including ***a scheduler that is associated with a client*** and responsible for servicing a media data stream being sent to the client, the scheduler adapted to formulate a send request that designates the client as a destination for a media data portion of the media data stream (claim 1)

- scheduler means for scheduling media data to be sent to **multiple clients with which the scheduler means is associated**, the scheduler means including send request means for requesting the sending of the media data to the multiple clients

[0020] This claimed association gives at least the following benefit:

"...the particular scheduler 306 may have knowledge of potential choke points within network 204 and along network links 210 that can affect the ability to disseminate media data to the given client 206 in a timely manner." (Application, para. 0036).

[0021] In Horn, this burden is put upon the *client* device as can be seen from Horn, para. 0074:

As another example, the MOD client 104 may decide from which MOD server 102 to download a segment based on its current reception rate of other segments from that MOD server 102. In another embodiment, the MOD client 104 may add or remove MOD servers 102 from which it is downloading in order to receive a segment. For example, a MOD client 104 may try to download a segment from a second MOD server 102 concurrently ***if there is congestion in the network***. As another example, a MOD client 104 may download a segment from a second MOD server 102 ***due to failure of, lost communication with, etc., a first MOD server 102*** from which it was downloading the segment. (emphasis added).

[0022] Furthermore, it is neither explicitly stated, nor inherent that the schedulers in Horn "formulate a send request that designates the client" as recited in claim 1, "transmit to the first sender a first send request that designates a destination client", as recited in claim 11, or that the schedulers in horn include a "send request means" as recited in claim 30.



**[0023]** According to Horn para. 0075, requests for media come from the *client* as “downloads”.

**[0024]** Paragraph 0067 of Horn states that “the administration server... may determine a schedule of which MOD servers will serve a particular media object,” but does not state that it requests the media, nor does it additionally designate a particular client.

**[0025]** Consequently, Horn does not disclose all of the claimed elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

*Dependent Claims 2-10, 12-16 and 31-35*

**[0026]** These claim groups ultimately depend upon independent claims 1, 11, and 30 respectively. As discussed above, claims 1, 11, and 30 are allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

*Independent Claim 36*

**[0027]** Independent claim 36 presently recites at least the distinction noted above. That distinction can be seen from the following claim language:

- create a scheduler on at least one device of the plurality of devices, ***the scheduler adapted to request the sending of the respective media data blocks*** from the respective senders ***to a destination client***; wherein the respective senders are capable of sending the respective media data blocks to the destination client without using the scheduler (claim 36).

[0028] Again, the Examiner relies upon Horn to reject these claims with only the following to add to the rejection of claim 36:

Regarding claim 36, the claims have been analyzed and rejected for the reasoning as claim 11 above; where it is inherent a processor must be used for performing the operations.

[0029] Applicant reiterates that, according to Horn, media requests emanate from the *client* device. Further, as Applicant noted previously, the scheduler does not designate client devices.

[0030] Consequently, Horn does not disclose all of the claimed elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

#### Dependent Claims 37-40

[0031] These claims ultimately depend upon independent claim 36. As discussed above, claim 36 is allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally,

some or all of these claims may also be allowable for additional independent reasons.

Independent Claims 17

[0032] In rejecting independent claim 17, the Examiner uses the same rationale as he does for independent claim 11.

[0033] Herein Applicant amends independent claim 17 to clarify the present distinction as noted above in reference to independent claim 11. That distinction can be seen in the following claim language:

- ***transmitting a send request from a first device*** to a second device, the send request designating a destination client and stipulating a media data portion; and
- sending from the second device to the destination client the stipulated media data portion in response to the send request, wherein the first device is not the destination client.

[0034] Applicant reiterates that, in Horn, media requests emanate from the *client* device (see Fig. 1, 0066).

[0035] Consequently, Horn does not disclose all of the claimed elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

### Dependent Claims 18-29

[0036] These claims ultimately depend upon independent claim 17. As discussed above, claim 17 is allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

### **Dependent Claims**

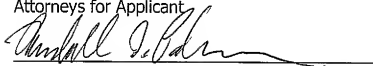
[0037] In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

## **Conclusion**

[0038] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call/email me or my assistant at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC  
Attorneys for Applicant



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Randall T. Palmer ([randy@leehayes.com](mailto:randy@leehayes.com); x261)

Registration No. 61440

Kayla D. Brant ([kayla@leehayes.com](mailto:kayla@leehayes.com); x242)

Registration No. 46,576

Assistant: Megan Arnold ([megan@leehayes.com](mailto:megan@leehayes.com); x270)

Customer No. **22801**

Telephone: (509) 324-9256

Facsimile: (509) 323-8979

[www.leehayes.com](http://www.leehayes.com)